

ESTABLISHING REAL ESTATE TRUST ACCOUNTS

This guideline has been prepared in response to concerns arising from routine audits, inspections, and office visits in the field that continue to indicate confusion concerning the requirements of establishing and managing a real estate trust account. It also instructs on the law's requirement that "entrusted funds" be deposited into a real estate trust account.

Establishing and Managing a Real Estate Trust Account.

Real estate brokers in Idaho are not required to open a real estate trust account. In the event the firm does not have one, funds received by the brokerage from a party to a transaction are to be delivered to a third party, like a title company, as directed in writing by the parties to a transaction. A broker may also have their own real estate trust account but still have parties to the transaction direct funds to be held by a title company.

For the purposes of this section, a Real Estate Trust Account is an account established by the Designated Broker of a brokerage. It does not include accounts under the control of title companies or attorneys.

In order to establish a real estate trust account, the account must be in the licensed business name of the broker; it must be identified as a "real estate trust account"; and the funds must be subject to withdrawal on demand by the broker. The broker may authorize others to sign trust account checks and withdraw funds, but the broker is held strictly responsible and accountable for the funds on deposit. Each real estate trust account must have a separate and complete set of records consisting of monthly accounting, deposits, and charges. See Idaho Code 54-2042.

Regardless of where the broker establishes a real estate trust account, the broker is required to notify the Commission on a form entitled "Trust Account Notification" and includes the "Agreement & Authorization to Inspect." This form must be signed by the broker and by an officer of the trust account depository. Every broker is required to complete and turn in this form, even if they elect not to have a trust account. The form contains an option that must be selected for those not keeping a real estate trust account.

In the event of a cooperative transaction between two brokerage companies, the funds may be placed in the listing or selling broker's trust account as either of the brokers may be the "responsible" broker for that transaction. See Idaho Code 54-2048.

Broker's Duty to Deposit "Entrusted" Funds into a Real Estate Trust Account

A broker is required to deposit any and all "entrusted" funds it receives into a real estate trust account maintained by the broker, and the broker is responsible for those funds. **Any and all funds received by the broker are considered "entrusted" UNLESS:**

- (1) the parties have directed the broker, in writing, to transfer those funds to control of a third party, such as a title, escrow or trust company; *and*
- (2) neither the broker nor his licensees have any right to exercise control over the safekeeping or disposition of the funds.

Broker's Duty regarding Funds that are NOT "Entrusted"

Whenever a broker receives funds with the parties' written direction to transfer them to a third party, the broker's duty is to transfer the funds as directed and maintain a ledger record of the time and date of the transfer; he must also obtain and retain a receipt. Because such funds are not considered "entrusted," the broker has no duty to deposit them into a real estate trust account under the broker's control.